

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

AUG 10 2016

JULIA C. DUDLEY, CLERK
BY: 
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UNITED STATES OF AMERICA,) CASE NO. 5:09cr00036
) (CASE NO. 5:16cv80984)
)
v.) MEMORANDUM OPINION
)
)
MALCOLM CARL YOUNG,) By: Hon. Glen E. Conrad
) Chief United States District Judge
Defendant.)

Malcolm Carl Young, a federal inmate proceeding pro se, filed a pleading (ECF No. 46) asking for reconsideration of his career offender sentence under Johnson v. United States, 135 S. Ct. 2551 (2015). Based on the nature of his claims, the court construed and docketed his submission conditionally as his initial § 2255 motion. Because Young has not responded to the conditional filing order entered in this case, the court now dismisses his § 2255 action without prejudice.

A district court must offer the defendant an opportunity to elect whether or not he objects to the court's stated intention to address his post-conviction motion as a § 2255 action. See Castro v. United States, 540 U.S. 375 (2003). In making this decision, the defendant should consider particularly § 2255(f) (setting time limit for defendant to file a § 2255 motion) and § 2255(h) (limiting defendant's ability to file second or successive § 2255).

In this case, the court notified Young that his pleading challenging his sentence under Johnson had been construed as a § 2255 motion, advised him of the statute of limitations and successive petition provisions of that statute. The court also notified Young that if he wished to have his claims considered as his initial § 2255 motion, he must submit within 14 days a properly executed § 2255 motion. The court also advised Young that if he failed to do so, the

conditionally filed § 2255 motion would be dismissed without prejudice. The response time has elapsed, and Young has had no further communication with the court. Accordingly, the court will dismiss the conditionally filed § 2255 motion without prejudice. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to the defendant.

ENTER: This 10th day of August, 2016.



Chief United States District Judge